WHY WE INTEND TO REFUSE PROBATION

Judge Crittenden is offering every defendant a one or two year term of probation in addition to otherpenalties, ranging from a $50 fine to several months in jail. We intend to refuse probation and take our chances on the longer sentence that will certainly result.

The purpose of probation is to make sure that we refrain from participating in any kind of mass action for a year or two. The terms of probation specifically forbid us to participate in any mass trespass, or mass disturbance of the peace, or un-lawful sit-in; and generally demand that we obey all laws. More generally still, they require us to be "of good conduct".

At any time during the probationary period, the judge can declare us to have violated the terms of probation and give us a jail sentence of up to 12 months. It is virtually impossible to appeal such a ruling. Even if we resolve to keep our noses clean for a year or two, the sword still hangs over our heads. We can be hauled off of a perfectly lawful picket line on trumped-up charges (yes--it has happened here!) and be found in violation of probation <u>even if the original trumped-up charges are dropped</u>.

If we accept probation, we should recognize that it means dropping out of the student movement for all practical purposes. We do not want to drop out of the student movement now. It may be necessary to defend again the rights we fought for in December. The war in Viet Nam may soon be of such proportions that every American will have to take a stand. The civil rights movement continues to need student support.

The alternative to probation is a jail sentence. Once we have served it, we will have "paid our debt to society" and will be free from judicial control. How long will the jail sentence be? There is no way of knowing in advance, but it seems likely that the larger the number who refuse probation, the shorter the jail term will be. If there are just a few of us, we will be singled out as "trouble-makers." But if there are several hundred, this will be impossible.

The first group of defendants at Monday morning's session all accepted probation. There had been no discussion of the matter--many did not even know they had a choice. During the recess there was a defendants meeting devoted to this question, after which about forty per cent refused probation or asked to be given more time for deliberation.

Your choice need not be made today. You can ask for more time and have the matter put over another week or two. But the decision must be made soon.

It is technically possible to wait until the end of the appeal before committing ourselves to rejecting probation, but it would be very unwise to do so. Between now and the end of the appeal many of us may be involved in activities leading to arrest. This would probably lengthen the jail sentence of those refusing probation at that time. And we will then be dispersed and alone.

We hope to hold a defendants' meeting before the 29th where those who asked for time to consider their position on probation can more fully discuss this decision and other questions relating to our case.

Joseph A. Blum
Joe Botkin
Michael Duke
Marvin Garson
Michael James
Mario Savio
Suzanne Savio
Buddy Stein
Mae Takagi
Jack Weinberg
David T. Wellman
Nick Zvogintzov

"It is hereby further stipulated that the defendants listed in Exhibit C attached hereto would testify that they were on December 2, 1964, members of the FSM Executive Committee or FSM Steering Committee as indicated opposite their respective names."

If we enter the proposed stipulation, we will be putting in the record a list of "leaders" and "followers", of students and non-students. The prosecution wants that list in the record in order to ask for heavier penalties for certain defendants.

Of course, the prosecution already has a little list, compiled by spies and phone taps. But the DA is unwilling to present such sources in court. Only with our cooperation can he get into the record a list of defendants to be given heavier sentences. Six months ago we were offered a deal which would allow the prosecution to single out some of our leaders for special punishment. We refused. Now we are asked to go a step further, to put into the record ourselves a bona fide, unabridged list of victims.

There is a clear alternative---to rest our case right now without any stipulations. The chance that this could hurt us is practically nil.

We have never taken the "state of mind" defense seriously. It is the judge who dreamt it up. Our lawyers, who have a great deal more concern for our defense than does the court, have told us time and again that "state of mind" is no real defense but just a device to get the history of the free speech controversy into the record.

Once the history of last semester was in the record, our lawyers told us, they would drop the entire "state of mind" farce and argue the real defense: that our actions were a reasonable way of gaining certain constitutionally protected rights which the University insisted on denying. They have stated on many occasions in the record that our defense was based on this rather than on the "state of mind" of individual defendants.

Now our lawyers, through ingenuity and perseverance, have gotten into the record just about everything that they humanly could. The "state of mind" defense has no further utility. Yet we are being asked to deliver up victims to the prosecution---the five who are not permitted to stipulate, the members of the Executive and Steering Committee, the non-students---on the extremely remote chance that the stipulation could help the rest of us. Why?

It is not that our lawyers are "selling us out." In fact, they have shown a great deal more concern for the defense than any of us have. They have lived with this case night and day for six months while most of us have gone about other business. It is because of our apathy---not our militancy---that they want to enter the stipulation.

At the defendant's meeting last Friday noon, the lawyers told us that there was perhaps one chance in a hundred that the "state of mind" stipulation could help us. But as long as their clients are so apathetic, it is difficult for them to reject this one chance in a hundred. They are afraid that defendants who have taken little interest in the case thus far will accuse them afterward of negligence (or "selling out") because they didn't stipulate.

Six months ago, we would have rejected a deal like this with contempt. There was a time when we signed petitions of complicity because five people had been singled out as victims; when we sat around a police car because one person had been arrested; when we sat-in in Sproul Hall because four people were threatened with punishment. But a great deal has happened since then to wear us down and break our spirits. Now we are returning to the normal state of affairs in which each man is willing to sacrifice his fellow in the hope of the faintest advantage for himself.

If we enter this stipulation, the court will have achieved its purpose even before the verdict. It will have succeeded in "rehabilitating" us.

Mike Marcus
Marvin & Barbara Garson
Linda Smith
Pat Iiyama
Steve Lustig
Peter O. Israel
Florence Yellin

labor donated